

Council of the City of Petaluma

ORDINANCE NO. _____

**ORDINANCE (1) PROTECTING JOB SECURITY BY ESTABLISHING A
HOSPITALITY WORKER RIGHT TO RETENTION**

BE IT ORDAINED, by the Council of the City of Petaluma, as follows:

Section 1. That Title 8 of Petaluma Municipal Code is amended by adding new Chapter 8.50 _
to read as follows:

Chapter 8 of the City of Petaluma Municipal Code is amended as follows:

HOTEL WORKER RETENTION

8.50.010. Definitions.

For purposes of this section, the following terms shall have the following meanings:

- (a) "Change in Control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel, or a discrete portion of a Hotel that continues to operate as the same type of business of the incumbent hotel employer, or any person who controls the incumbent hotel employer.
- (b) "Hotel" means a residential building that is designated or used for lodging and other related services for the public, and containing 50 or more guest rooms, or suites of rooms (adjoining rooms do not constitute a suite of rooms). "Hotel" also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.
- (c) "Hotel employee" means any individual whose regular place of work is a hotel within the City of Petaluma on a full- or part-time basis (eight hours or more a week) during the ninety (90) days immediately preceding any change in control subject to this chapter, except for persons who are managerial, supervisory, or confidential employees, and persons regularly scheduled to work fewer than eight hours per week.
- (d) "Incumbent Hotel Employer" means the person who owns, controls, and/or operates a hotel prior to the change in control.
- (e) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity, with more than twenty-five (25) employees in the State of California that may employ persons or enter into service contracts, but it does not include a county, school district, community college district, the State of California, and the federal government or any other governmental entity except the City of Petaluma.
- (f) "Regularly scheduled" with respect to services means of an ongoing nature and not for a specific event or to accomplish a single repair or up-grade.

(g) "Successor Hotel Employer" means the person who owns, controls, and/or operates a hotel after the change in control.

(h) "Transfer Document" means the purchase agreement or other documents creating a binding arrangement to effect the change in control.

8.50.020. Notification and retention at hotels.

(a) No less than fifteen (15) calendar days after execution of a transfer document, an incumbent hotel employer shall provide to the successor hotel employer a full and accurate list containing the name, home address and telephone number, date of hire, and job category of each hotel employee employed by the incumbent hotel employer.

(b) The successor hotel employer shall retain for a ninety (90)-day transition employment period all hotel employees that were employed by the incumbent hotel employer. During the ninety (90)-day transition period, the successor hotel employer shall not substantially change a hotel employee's work shift or work location.

(c) The successor hotel employer shall ensure that a notice to hotel employees is posted setting forth the rights provided under this section and which includes a copy of any list provided pursuant to subsection (a) of this section with the home addresses and phone numbers redacted, and that such notice is also provided to the hotel employees' collective bargaining representative, if any. The notice and list shall be posted in the same location and manner that other statutorily required notices to employees are posted at the affected sites.

(d) If at any time the successor hotel employer determines that fewer hotel employees are required to perform services than had been performing such services by the incumbent hotel employer, the successor hotel employer shall retain the hotel employees by seniority within job classification; provided, that during such ninety (90)-day transition period, the successor hotel employer shall maintain a preferential hiring list of those hotel employees not retained at the sites who shall be given a right of first refusal to any jobs within their classifications that become available during that period.

(e) Except as provided in subsection (d) of this section, during such ninety (90)-day period, the successor hotel employer shall not discharge without cause a hotel employee retained pursuant to this section.

(f) At the end of the ninety (90)-day transition period, the successor hotel employer shall complete a written performance evaluation for each hotel employee retained pursuant to this section. If a hotel employee's performance during such ninety (90)-day period is satisfactory, the successor hotel employer shall offer such hotel employee continued employment under the terms and conditions established by the successor hotel employer.

8.50.030. Relationship to employment contracts and agreements.

This Chapter applies to all employees as defined herein regardless whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Nothing in this Ordinance shall be construed to invalidate or limit the rights, remedies and procedures of

any contract or agreement that provides greater or equal protection for employees than are afforded by this Ordinance.

8.50.040. Remedies.

(a) A hotel employee who has been discharged or not retained in violation of this section, or the collective bargaining agent of the employee, may bring an action in any superior court of the State of California having jurisdiction over the successor contractor or successor hotel employer. Upon finding a violation of this chapter, the court shall award back pay, including the value of benefits, for each day during which the violation occurred and continues to occur. If the court determines that the successor hotel employer's violations were willful, it shall order treble back pay and reinstatement. The amount of back pay shall be calculated as the greater of either of the following:

(1) The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification multiplied by the average hours worked during the last three years of the employee's employment.

(2) The final regular rate of pay received by the employee at the time of termination of the predecessor hotel, or at the time of the change in control, multiplied by the number of hours usually worked by the employee.

(3) The court may order a preliminary or permanent injunction to stop the continued violation of this chapter.

(4) If the employee is the prevailing party in the legal action, the court shall award the employee or collective bargaining agent reasonable attorney's fees and costs as part of the costs recoverable.